

**AMENDMENT AND RESPONSE**

Serial Number: 09/659,502

Filing Date: September 11, 2000

Title: AROMATHERAPEUTIC ENVIRONMENTAL SYSTEM

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Dkt: 497.001US1

**REMARKS CONCERNING THE AMENDMENTS**

The above amendments were made in response to the Final Office Action. No new issues are presented and no new search is required. Applicants embedded limitations already in claim 32 into claim 31 to reduce issues on Appeal and overcome the rejection.

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**SUMMARY OF THE OFFICE ACTION**

- 1) Claims 31, 33-37 and 39 have been provisionally rejected under the Doctrine of Obviousness-Type Double Patenting over copending application Serial No. 11/441,647.
- 2) Claims 31, 33-37 and 39 have been rejected under 35 USC 103(a) as unpatentable over WO98/21307 (corresponding to US Patent No. 6,114,298, **Petri**) in view of **Remington's** Pharmaceutical Science.
- 3) Claims 35-39 have been rejected under 35 USC 103(a) as unpatentable over US Patent No. 5,788,975 (**Laversanne, et al.**).

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**RESPONSE TO THE REJECTION**

- 1) Claims 31, 33-37 and 39 have been provisionally rejected under the Doctrine of Obviousness-Type Double Patenting over copending application Serial No. 11/441,647.

A Terminal Disclaimer has been filed. This rejection is now moot.

- 2) Claims 31, 33-37 and 39 have been rejected under 35 USC 103(a) as unpatentable over WO98/21307 (corresponding to US Patent No. 6,114,298, **Petri**) in view of **Remington's Pharmaceutical Science**.

The disclosure of Remington cannot be used as applied in this rejection. Even if assuming that the underlying disclosure of Petri overlaps the recitation of the claims, except for the use of Tween 20, all additives are not equivalent, all additives are not useful in every possible generic category of useful compositions (e.g., surface cleansers), and the interaction of additives, especially an additive as uniquely structured as the cyclic Tween 20, cannot be predicted.

It is furthermore an error to assert that "It is known that various non-ionic surfactants as [*sic*, "are"] useful in the composition of '298. [**Petri**] Therefore, employing any well-known pharmaceutically and cosmetically acceptable surfactant, including Tween 20..." would be obvious. Additionally, the composition has been limited to "consisting of a solution" while the **Petri** composition, as an essential element of the invention, requires the composition to be an emulsion. Making the composition of the claims a solution requires the balancing of ingredients and materials recited as:

- a) Maximum pH of 6.0 versus the pH of at 6.5-7.0 in claim 31 and 37.
- b) Maximum alcohol chain length of 6, versus long-chain aliphatic alcohols (chain lengths of at least 10) in claims 34, 35, 36, 27, 38 and 39.
- c) The use of Tween 20 complexing agent in claims 33 and 38.

It must be realized that although **Petri** makes some general statements about the efficacy of the disclosed compositions in general terms, the functionality of the lower carbon length alcohols

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(C1-C6) is described as important to the antimicrobial/disinfecting properties of the composition (note in Table IV that 50% of the antimicrobial activity comes from the very low carbon atom ethyl alcohol). It would therefore not be obvious to remove the essential emulsion nature of **Petri** and optimize other ingredients to obtain an unexpected result.

This rejection fails to provide a basis for destroying the underlying and required physical characteristic of **Petri** as an emulsion and to add the unique Tween 20 surfactant..

3) Claims 35-39 have been rejected under 35 USC 103(a) as unpatentable over US Patent No. 5,788,975 (**Laversanne , et al.**).

**Laversanne** is a totally inappropriate reference against the claims. As the claims recite a composition consisting of a solution, the microencapsulated composition and blend of **Laversanne** cannot render the present claims obvious without destroying the underlying characteristic of the **Laversanne** material. This rejection cannot constitute obviousness.

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Dkt: 497.001US1CONCLUSION

For the above reasons, all rejections have been traversed and there is no basis of record for considering any rejections of the claims remaining. Applicants would appreciate a telephone call from the examiner if any personal conference would be useful in addressing any remaining issues in this Application. The Examiner is invited to telephone Applicant's attorney at (952)832.9090 to facilitate prosecution of this application.

Respectfully submitted,

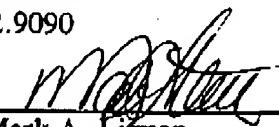
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Date: 18 January 2008

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I hereby certify that this correspondence is being sent by facsimile to the US Patent and Trademark Office addressed to MAIL STOP: RCE,  
Assistant Commissioner of Patents, PO BOX 1450, Alexandria, VA 22313-1450 on ~~18 January 2008~~ 18 January 2008

Name Mark A. Litman Signature